

C.R.P.(PD)(MD).No.783 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 17.03.2025

DELIVERED ON: 27.03.2025

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(PD)(MD).No.783 of 2025

Shivani

....Revision Petitioner/Petitioner

Vs

Subbaiah Murugan @ Ganesan

...Respondent/Respondent

PRAYE: Civil Revision Case is filed under Article 227 of Constitution of India, to call for all the records pertaining to the order of the Family Court, Trichy in its order dated 10.02.2025 in F.No.OP(GWOP).No.927 of 2024 on the file of the Family Court, Trichy and to set aside the same and to number the revision petitioner's application.

For Petitioner : Mr.R.Vigneshwaran

ORDER

The instant revision petition has been filed by the petitioner in F.No.OP(GWOP).No.927 of 2024 on the file of the Family Court, Tiruchirappalli challenging the order of return passed by the said Court.



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(A)Factual Matrix:

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2.The revision petitioner herein has filed the above said application under Section 7 of the Guardian and Wards Act, 1890 read with Section 7(1)(g) of the Family Courts Act 1984 to appoint herself as the guardian for the person and property, if any, of the minor son aged about 1 ½ years. This petition has been returned by the Family Court on the ground that as per Section 7(1)(g) of the Family Courts Act, the Family Court has got jurisdiction only with regard to the appointment of guardian of person and has no jurisdiction for appointment of a guardian in respect of the property of a minor. This order is under challenge in the present revision petition.

3.According to the learned counsel for the revision petitioner, as per Section 7(1)(g) of the Family Courts Act 1984, a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor is maintainable. He had further contended that the word 'in relation to the guardianship' means guardianship of not only of a person, but also the property of the minor. If a restricted interpretation is given to Section 7(1)(g), that would result in filing of application before the two different Courts.



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4.The learned counsel appearing for the petitioner had relied upon a judgment of the Gauhati High Court reported in AIR (GAU)-2010-046 to contend that an application seeking appointment as guardian of the person as well as the property of a minor would lie to the family Court of that area. He had further pointed out that the word 'person' appearing in Clause (g) must be read to refer to a minor as a person and not necessarily and exclusively the person of a minor. He had further pointed out that the Hon'ble Gauhati High Court has held that this would mean guardianship of not only a person of a minor, but also a property of a minor.

5.The learned counsel for the revision petitioner has also relied upon Section 7(1)(b) of the Family Courts Act, 1984 to contend that for all purposes, the Family Court exercising jurisdiction under law should be deemed to be a district Court to the area to which the jurisdiction of the Family Court extends. Therefore, when the Family Court is deemed to be a District Court, the power exercisable by the District Court under Sections 7 and 9 of the Guardians and Wards Act, 1890 can be exercised by the Family Court under Section 7(1)(g) of the Family Courts Act.



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6.The learned counsel for the petitioner had further contended that if the power of the Family Court is restricted to the guardianship of a person alone then that would result in causing hardship to the petitioner by forcing them to file another GWOP before the District Court seeking guardianship of the property. Whenever hardship is felt, the Court has to interfere and interpret the law in such a manner that hardship is erased and there is no necessity for the litigant to approach two different Courts with regard to the appointment of a guardianship for person and for property. The learned counsel also relied upon decisions of various Courts in support of his contention.

7.Heard the learned counsel appearing for the petitioner and perused the material records.

(B)Discussion:

8.The law relating to the guardianship is governed by Guardians and Wards Act, 1890. Section 7 of the said Act confers power upon the Court for appointment of guardian of his person or property for the welfare of a minor. Section 9 of the said Act confers jurisdiction upon the District Court to deal with such an application.



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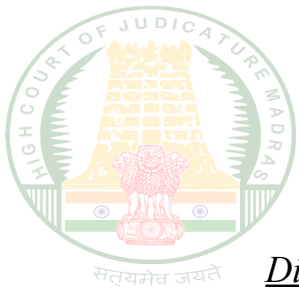
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9.The Family Courts were established under the Family Courts Act, 1984. As per Section 7(1)(a) of the Act, the Family Court will have all the jurisdiction exercisable by the District Court or any Subordinate Court in relation to the suits or proceedings referred to in the explanation to Section 7. As per Section 7(1)(b), the Family Court shall be deemed to be a District Court for the purpose of exercising such jurisdiction in the area to which jurisdiction of the Family Court extends. Therefore, it is clear that the Family Court shall have all the powers of a District Court or any other Subordinate Civil Court in relation to all the suits and proceeds as referred to in the explanation. As per Section 7(1)(g), the Family Court shall have jurisdiction to entertain a suit or proceedings in relation to the guardianship of the person or the custody of, or access to, any minor.

10. Though the Family Court Act is conferred with the power of a District Court, the power to appoint guardian with regard to a property of the minor is conspicuously absent.

11.The Hon'ble Division Bench of Kerala High in a judgement reported in ***2021 SCC Online Ker 6231 (K.S.Narayana Elayathu Vs. Sandhya)*** in paragraph No.16 has held as follows:

“16.As far as the impugned proceedings of the _



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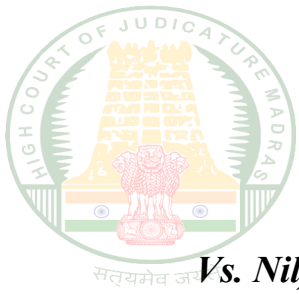
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District Court dated 22.11.2021 is concerned, with respect to the jurisdiction to entertain the petition for appointing guardian for the property of the minor, there is no illegality or impropriety which warrants our interference. But, with respect to the appointment of guardian of the person of the minor, the District Court has no jurisdiction, as it is a dispute squarely coming under explanation(g) to Section 7(1) of the Family Courts Act. So, to that extent, the proceedings of the District Court is liable to be set aside. The District Court can proceed with the O.P. for appointing guardian for the property of the minor, and not for the person of the minor.”

12.The Hon'ble Division Bench of Orissa High Court in a judgment reported in **1997 SCC Online Ori 7 (Susila Naik Vs. Judge, Family Court, Rourkela and another)** in paragraph No.10 has held as follows:

“10.The statement of objects and reasons indicates clearly that the scope regarding guardianship and custody of a minor is specifically included. To deal with the question of property of a minor is beyond the scope of the Act and no such power has been conferred vis-a-vis there is no jurisdiction of the Family Court to exercise the same.”

13.The Hon'ble Division Bench of Andhra Pradesh High Court in a judgment reported in **2012 SCC Online AP 295 (Bula Yedukondalu**



Vs. Nil in paragraph No.4 has held as follows:

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“4. It may be noted that Section 7 of the Family Courts Act, 1984 (for short Act), specifies the matters over which the Family Court can exercise jurisdiction. Sub-section (1) of section 7 says that a Family Court shall have and exercise all the jurisdiction exercisable by any District Court or any Subordinate Civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation to that sub-section. The Explanation contains clauses (a) to (g) specifying about the suits having regard to their nature. Clause (g) of the said Explanation says "a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor". This clause (g) read with Sub-section (1) of section 7 of the Act thus says that a Family Court can have jurisdiction only in respect of a suit or proceeding in relation to the guardianship of the person or custody or any access to any minor and it is conspicuously silent about the guardianship of the property of a minor. It can thus be said by reason of the above clause(g), a Family Court cannot exercise jurisdiction to appoint a guardian for the property of a minor.”

14.A learned Single Judge of this Court in a judgment reported in **2019 SCC Online Mad 20332 (Kachammal Vs.Veeraragahavan)** in



paragraph No.5 has held as follows:

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“5.Section 7(1)(g) of the Family Courts Act, 1984 empowers the Family Court to deal with the suit or proceeding in relation to the guardianship of the person or custody or, or access to any minor. At that same time, Section 7 of the Guardian and Wards Act, 1890 empowers the District Court to appoint a guardian in respect of the person or property or both, of a minor, if the same is required for the welfare of the minor. Though a petition relating to guardianship of a minor can be filed under both the above provisions of law before the jurisdiction Court, when the relief of guardianship in respect of the property of the minor is also sought for, the same shall be dealt with only by the District Court in view of the special enactment under the Guardians and Wards Act,1890. Here, in this case, the grandmother of the minor filed GWOP seeking guardianship of the minor as well as his property. Therefore, it has to be dealt with only by the District Court.”

15.When the legislature in its wisdom has conspicuously not included the power to appoint a guardianship for the property of a minor to the Family Court, the Court cannot interpret such a provision in such a manner to confer powers upon the Family Court which is conspicuously absent. Merely because the petitioner would be driven to file application



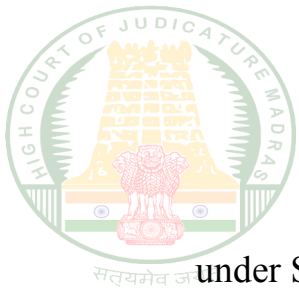
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before two different Courts, the said hardship cannot be a ground to confer power upon the Family Court to appoint a guardian for the property of the minor when the statute has not conferred such powers upon the Family Court.

16.The Court can take judicial notice of the fact that the Family Court are exercising jurisdiction only within the territorial limits of the corporation or the town in which they are located. They do not exercise jurisdiction over the entire District like a District Court. If the property is located outside the jurisdiction of the Court, the Court will not be in a position to exercise jurisdiction so as to appoint a guardian for taking care of the property of a minor.

17.Whenever a guardian is appointed with regard to the property, every time the guardian will have to approach the Court seeking permission of the Court to create any encumbrance over the property as contemplated under Section 29 of the Guardians and Wards Act, 1890. Any transfer made in violation of Section 29, would be a voidable transfer at the instance of the affected person. The Court has to take into consideration the various conditions imposed under Section 31 of the Guardians and Wards Act while permitting the transferrers/ alienation



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under Section 29 of the said Act.

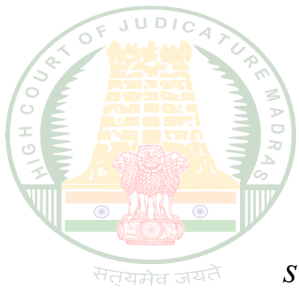
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18.A careful reading of Section 29, 30 and 31 of the Guardians and Wards Act 1890, would clearly reveal that only the District Court would be in a position to deal with those applications filed by a guardian of the property. Section 7(1)(g) of the Family Courts Act cannot be interpreted to mean that the Family Court has also been conferred with powers to deal with the application filed under Sections 29 to 31 of the Guardians and Wards Act.

19.When the provisions of the Family Court Act are read along with the Guardians and Wards Act, it will be clear that the legislature in its wisdom has thought it fit to exclude the powers of the Family Court from appointing to the property of a minor.

20.The Hon'ble Supreme Court in a judgment reported in **2003 (6) SCC 659 (Shiv Shakti Coop. Housing Society, Nagpur Vs.M/s. Swaraj Developers & Ors.)** in paragraph No.19 has held as follows:

“19.It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent. Words and phrases are symbols that



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stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the Legislature enacting it. (See Institute of Chartered Accountants of India v. M/s Price Waterhouse.) The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided....”

(C)Conclusion:

21.In view of the judgment of the Hon'ble Supreme Court cited supra and the deliberations made above, this Court cannot infer or supply words so as to mean that the guardianship relating to the property of minor is also covered under the explanation 7(1)(g) of the Family Courts Act, 1984. In the present case, no schedule of property has been mentioned in GWOP. The prayer shows that ' property, if any' . Therefore, the Family Court has rightly returned the guardian petition filed by the revision petitioner on the ground that it has no jurisdiction to entertain the petition for appointment of guardian for the property of a minor. In case, if the petitioner deletes the word, 'property' from the prayer and re-presents



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GWOP, the Family Court, Trichy is directed to number the same, if it is otherwise in order.

22. With the above said observations, this civil revision petition stands disposed of. No costs.

27.03.2025

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
msa

To

1. The Family Court, Trichy
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

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